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OFFICE OF PETITIONS

In re Application of
Constantin Agouridas et al
Application No. 09/416,022
Filed: October 8, 1999
Attorney Docket No. 146.1327

:
: DECISION DISMISSING PETITION
: TO WITHDRAW FROM ISSUE
: UNDER 37 CFR 1.313(c)(3)
:

This is a decision on the petition, filed February 13, 2002, which is being treated as a petition under 37 CFR 1.313(c)(3), to withdraw the above-identified application from issue after payment of the issue fee in favor of a continuing application (assigned Application No. 10/075,635, filed February 13, 2002).

The petition is **DISMISSED** as moot.

Unfortunately, the instant petition did not reach the appropriate deciding official's office for action until after issuance of this application into Patent No. 6,352,983 on March 5, 2002. It is noted that the instant petition was received in the Office of Initial Patent Examination on February 13, 2002, and received in Technology Center 1600/2900 on February 27, 2002. The instant file containing the petition to withdraw from issue was not received in the deciding official's office until recently. Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**.

Note also 1220 *off. Gaz. Pat. Office* 42 (March 9, 1999), under "Patents to Issue More Quickly after Issue Fee Payment," and 1221 *off. Gaz. Pat. Office* 14 (April 6, 1999), under "Filing of Continuing Applications, Amendments, or Petitions After Payment of Issue Fee," which states:

In the event that it is necessary to file a petition under 37 CFR 1.313(b) [now 37 CFR 1.313(c)] to withdraw an application from issue after payment of the issue fee, the PTO strongly recommends that the petition be clearly marked "Petition under 37 CFR 1.313(b)" and be either:

- (1) Submitted by facsimile to (703) 308-6916; or
- (2) Hand-carried to the Office of Petitions.

Otherwise, it is quite possible that the petition will not be brought before the appropriate deciding official before the date the application issues as a patent.

The most common petition under 37 CFR 1.313(b) is a petition under 37 CFR 1.313(b)(5) to withdraw an application from issue for abandonment in favor of a continuing application to permit consideration of an information disclosure statement (IDS) in the continuing application. In this event, applicants are encouraged to file the petition under 37 CFR 1.313(b)(5) with a continued prosecution application (CPA) under 37 CFR 1.53 (d) by facsimile to (703) 308-6916. The petition need not be accompanied by the IDS (if the size of the IDS makes its submission by facsimile impracticable), but the petition should indicate that an IDS will be filed in the CPA if an IDS does not accompany the petition under 37 CFR 1.313(b)(5).

See also MPEP Section 1308.

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

The patented file is being forwarded to Files Repository.



Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy